IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 627 of 2005

Date of decision: 18.9.2007

Manik Puri and others **Petitioners**

Versus

State of H.P. and another **Respondents.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1]

For the Petitioners: Mr. Surinder Sharma, Advocate

For the Respondents: Dushyant Dadwal, Advocate

Deepak Gupta, J.

The brief background of the case is that the Union Parliament enacted the Territorial Council Act (Act No. 103 of 1956) (hereinafter referred to as the Act). This Act was made applicable to the State of Himachal Pradesh. By virtue of Section 28 of the Act certain matters which were previously dealt by the H.P. State Administration came under the control and administration of the Territorial Council. The Territorial Council was established in 1957. A number of employees were

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

posted from the H.P. Secretariat to the Territorial Council. Some of them were even promoted in the Territorial Council. The Council was abolished in 1963 and the employees were reverted back to their original departments. In the present case the department was the Secretariat. When the employees were reverted from Council, they were reverted back on the promoted posts and consequently some of the persons who were junior in the Secretariat and had been promoted in the Council on reversion were placed above the persons who were previously their seniors.

An integrated seniority list was prepared on 1.7.1973. One J.N.Sirkeck challenged this list by filing CWP No. 137 of 1968. This petition was allowed on 15.9.1975 and claim of J.N.Sirkeck was allowed in respect of a number of persons who were placed senior to him. The Court held that the persons who had been promoted in the Council and reverted to the H.P. Secretariat could not be ranked higher to the persons who were their erstwhile senior. The petition was allowed in the following terms:-

> "The result, therefore, is that the petition is so far as Servashri D.C. D.C.Premi (respondent No. 8), Bhagat Ram (respondent No. 17) and Ram Prakash

(Respondent No. 22) are concerned, fails, but the petitioner succeeds in respect of the other respondents and the Annexures PD, PK, PJ, PI and PL are hereby quashed and it is ordered that the seniority list shall be re-drawn in the light of the above observations and the petitioner shall be considered for promotion from the earlier date when his junior were promoted."

It is clear that the judgment passed was a judgment in personem and not a judgment in rem. Directions were only given in respect of J.N.Sirkeck and the persons over whom he claimed seniority.

Some of the respondents who were aggrieved by the order passed in the writ petition filed civil review petition No. 15 of 1975. After hearing the parties the court reviewed the matter and passed the following order in review:-

"We are satisfied that the respondents, who have applied for a review of our judgment, have made out a case for the grant of review. In the circumstances, we recall our judgment and order , dated September 15, 1975 so far as it affects the respondents who have applied for review, and restore the writ petition to its original number and direct it to be listed afresh for hearing n regard to the relief prayed for by the petitioner against those respondents."

(emphasis supplied)

It is clear from the perusal of the operative part quoted hereinabove, especially the portion which has been underlined that even in review the earlier judgment was recalled only in so far as it affected the review petitioners. This again could not be termed to be a judgment in rem. The writ was re-heard and finally disposed of by this court vide judgment dated September 5, 1979. The court specifically held that the persons who were sent to the Territorial Council did not become employees of Territorial Council and should be considered on foreign services or on deputation. The court directed that they be treated to be employees of the administration and on re-transfer to the administration they are to be governed in the matter of their employment like seniority etc. on that basis. The court further directed that seniority list be re-drawn in light of the aforesaid observations and directed that the petitioner shall be considered for promotion from the date when his juniors according to the re-drawn seniority list were promoted. This again was a judgment in personem and not in rem.

Pursuant to the orders of this court the State of Himachal Pradesh re-cast the seniority list on 12.12.1979. Integrated final seniority lists of the

employees of the H.P. Secretariat as well as the H.P. Terrirotial Council were issued on 24.12.1979. The petitioner did not challenge the seniority list and in fact did not raise any question about validity of this seniority list at all till 1993. However, some other employees of the H.P. Government filed Original Applications before the H.P.State Administrative Tribunal praying for certain directions pursuant to the directions of this court in J.N.Sirkeck's case. Directions were passed in those cases. It was only after the said cases were decided that the petitioner filed O.A. No. 207 of 1997 before the H.P.State Administrative Tribunal. It would be pertinent to mention that all the petitioners had retired when they filed the original application.

The learned Tribunal has come to the conclusion that the judgment passed in J.N.Sirkeck's case was a judgment in personem and has further held that seniority list which was circulated on 26.12.1979 cannot be permitted to be challenged after more than 18 years.

The only ground raised on behalf of the petitioners is that four retired officials, namely Tulsi Ram, Salig Ram, Devi Chand and Prem Gupta had filed cases

in the year 1988 and relief was granted in their favour. The petitioners claim that they are entitled to consequential benefits flowing from the seniority list Annexure A-2. The learned Tribunal held and rightly so in our opinion that that the petitioners could not claim this relief in 1997 after a period of almost 18 years. The learned Tribunal rightly held that the application of the claimants was time barred and they could not be allowed to rake up the matter of the seniority assigned to them after 18 years. The petition is, therefore, without any merit and is accordingly dismissed.

(Deepak Gupta), J.

September 18, 2007(K) (V. K. Ahuja), J.